IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 238 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-
HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/s.INVENTS A. G. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 21/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following question under Section 256(1) of the Income Tax, 1961 (the Act).

> “Whether, the Appellate Tribunal is right in law and on facts in holding that assessee's case is covered by the provisions of sec.115A(i)(b)(ii) of the Income-tax Act and, therefore, tax was leviable at the rate of 20% against 40% levied by the Income-tax Officer ?”

2 The Assessment Year is 1983-84 and the relevant accounting period is 31/3/1983.

3 Heard Mrs.M.M.Bhatt, learned Standing Counsel for the applicant-revenue. The Board shows the endorsement 'Notice unserved'. However, in view of the fact that the question referred stands concluded against revenue and in favour of the

assessee, it is not necessary to await service.

4 Mrs.M.M.Bhatt has fairly drawn the attention of the Court to the fact that identical question had been referred to this Court by way of Income Tax Reference No.95 of 1990 in the assessee's own case for Assessment Year 1982-83, and that by an order dated 7/4/2004 this Court had answered the question in the affirmative i.e. in favour of the assessee and against revenue.

5 In the circumstances, for the reasons stated in the order dated 7/4/2004 in Income Tax Reference No. 95 of 1990, the question referred is answered in the affirmative i.e. in favour of the assessee and against revenue. The reference stands disposed of accordingly.

Sd/- Sd/-
(D.A.Mehta, J) (H.N.Devani, J)

m.m.bhatt